

## DOCKET SECTION

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UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268  
POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Postal Rate and Fee Changes

Docket No. R97-1

### PRESIDING OFFICER'S RULING GRANTING, IN PART, MOTION OF ALLIANCE OF NONPROFIT MAILERS TO COMPEL ANSWERS TO INTERROGATORIES OR STRIKE TESTIMONY

(November 21, 1997)

The Alliance of Nonprofit Mailers (ANM) has filed a set of interrogatories that asks the Postal Service to provide detailed documentation for each library reference that it has sponsored into evidence. The set consists of ANM/USPS 1-16, filed on November 3, 1997, and ANM/USPS-17, filed on November 7, 1997. With respect to ANM/USPS 1-16, the Postal Service filed objections on November 6, 1997 ("Objection 1"), and ANM filed a motion to compel answers or strike testimony on November 14, 1997 ("Motion 1"). With respect to ANM/USPS-17, the Postal Service filed objections on November 13, 1997 ("Objection 2"), and ANM filed a motion to compel or strike testimony on November 17, 1997 ("Motion 2"). The Opposition of United States Postal Service to Motion of Alliance of Nonprofit Mailers to Compel Answers to Interrogatories or Strike Testimony (ANM/USPS 1-16) was filed on November 21, 1997 ("Opposition").

Most of ANM's interrogatories ask for the documentation that Rule 31(k) and Rule 54(o) identify as appropriate foundation for the receipt of certain kinds of information into evidence. Some ask for more than these rules require. These requests for information are directed to all library references that the Postal Service

intends to sponsor as evidence. The Postal Service complains that ANM has made no attempt to show that these interrogatories, and the rules that they are intended to paraphrase, apply to particular library references, and no attempt to show what portions of the requested information has not already been provided. It argues that ANM has some responsibility to review the extensive documentation of these library references that have been available for months to review, and focus its interrogatory requests accordingly. The Postal Service alleges that it would take 20 days to respond to the first 16 of these interrogatories, and that this burden is undue. It argues that it might have attempted to answer these interrogatories "by directing ANM generally to the library references, testimony, exhibits and workpapers of its witnesses, for there is where most of the answers to ANM's questions lie" but contends that this would not have added meaningfully to the record, and is unlikely to have satisfied ANM.

Objection 1 at 4.

ANM asserts that because most of its interrogatories parallel the filing requirements of Rules 31(k) and 54(o), and these rules state foundational requirements for admitting evidence into the record, they are presumed to be relevant. With respect to Rule 54(o), in particular, ANM contends that it requires the Postal Service to provide parties with a "step-by-step road map" through its filing. Motion 2, at 3. It argues that because the Postal Service was obligated to provide this information with its initial filing, it is obviously obligated to provide it now. Motion 1, at 2-3. It argues that it is the Postal Service's burden to determine the extent to which these interrogatories apply to particular library references, and its burden to identify any portions of the documentation already provided that satisfy its request for information. ANM contends that it has no obligation to "parse the Postal Service's case to identify defects and then formulate specific questions." Motion 1, at 4. With respect to burden, ANM concedes that the burden of complying with Rules 31 and 54 is considerable for a complex filing, but that it is properly placed upon the Postal Service. It does not dispute the Postal

Service's estimate that it would need 20 days to answer these interrogatories. But it argues that if it takes the Postal Service more than the standard time to respond, that the proceeding should be stayed during the additional time required. Motion 1, at 6.

ANM is correct that as the proponent of change, it is the Postal Service's burden to prove that the changes it proposes are warranted. ANM is not correct that in the current posture of the case, given the relief that it is requesting, it is free of any burden to have reviewed the Postal Service's library references and determined the relevance of its interrogatories and the degree to which the information requested has or has not already been provided.

The essence of due process is a reasonable opportunity to ask relevant questions and get responsive answers. With respect to the library references at issue, the parties have been somewhat handicapped by the initial failure of the Postal Service to formally sponsor them. But the parties are aware of past practice that has allowed some information to be provided in the form of library references as long as the parties have had reasonable notice of the relationship of the library references to sponsored testimony, and a reasonable opportunity to ask questions and get answers of the type that ANM now proposes to ask.

ANM has had four months to read the Postal Service's case, including witness Alexandrovich's summary of its novel costing aspects, review the relationship of these library references to sponsored testimony, and get some sense of the way in which the documentation of particular testimony or library references of interest fall short of standard requirements. The ten-month time limit imposed on these proceedings requires best efforts from all sides if these extraordinarily complex issues are to be processed in an orderly way. The schedule has already been compressed to the maximum extent possible to give the intervenors' ample opportunity to examine newly sponsored library references and prepare their direct cases. Under these circumstances, the intervenors have an obligation to make a reasonable effort to

narrow and focus their discovery requests. At the same time, the Postal Service has the obligation to do as much as it can to facilitate the intervenors' review of these newly-sponsored library references. Further compression of the schedule must be avoided. This will require sacrifices from both sides of this dispute.

These interrogatories are generic in form. Most of them, in some respect, go beyond what the Commission's rules require. This makes it difficult to rule on ANM's motions to compel, except in the context of a particular library reference, or portion of library reference, for which the detailed documentation is sought.

Most of these interrogatories ask where data or supporting documentation can be found, or where it can be obtained. These are the kind of questions that can be expedited by a technical conference. In the short time remaining before the hearings scheduled for December 1-4 on the Postal Service's supplemental testimony concerning these library references, ANM and the Postal Service are directed to attempt to arrange technical conferences in order to answer interrogatories of this kind. In the technical conference context, focused questions should be directed to specific library references at issue. The Service claims the information sought is in many instances readily apparent. If that is the case, a technical conference will be more efficient than preparing written materials. Otherwise proper interrogatories that are not satisfactorily answered in this informal context can be asked orally, during the December hearings.

The Postal Service also is directed to file, as a partial answer to interrogatories ANM/USPS 1-17, a short, general summary of where the foundational information required by Rules 31(k) and Rule 54(o) can be found with respect to each newly sponsored library reference to which these rules apply. The Service should arrange to make actual delivery to counsel for ANM. If at all possible, that information should be provided ahead of time for use at technical conferences.

The Commission is prepared to extend the hearing day as long as is necessary to complete cross-examination of Postal Service witnesses. As Presiding Officer, I will schedule cross-examination to minimize inconvenience. Participants with heavy cross-examination will be scheduled after participants with light cross-examination. An ANM motion to strike a particular library reference will not be ruled upon until the conclusion of its cross-examination concerning that library reference. It should be prepared to support any motion to strike by identifying the specific foundational deficiencies that it alleges warrant such a remedy.

As previously noted, not all of the information requested in ANM/USPS-1-17 may be presumed to be required by Rules 31(k) and 54(o). ANM/USPS-17, for example, asks that for all newly sponsored library references, the Postal Service provide "for all numbers used, but not derived therein, citations to the document, page, line, column, etc., which is the source of the number." Rule 54(o)(4) states that

[c]itations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, e.g., by reference to document, page, line, column, etc.

It goes on to state that

[w]orkpapers that follow a standardized repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by analogy.

Under the rule, therefore, a number used must be cited to a specific page, line, column, etc., if a cite of that detail is necessary to enable a reviewer to trace a number to its source. As the rule makes clear, that will depend on the circumstances. For that reason, motions to compel responses to interrogatories that seek such highly detailed references will not be ruled upon until ANM seeks to apply them to a specific portion of a specific library reference.

ANM/USPS-1 goes beyond what Rules 31 and 54 require. For data that any newly-sponsored library reference includes or relies upon, it asks the Postal Service to identify "each person who collected or summarized the data" and to "state when and where the data were collected and summarized." With respect to particular library references, this information may be more burdensome than probative. For example, some of these library references use or rely on basic data collection systems such as IOCS or MODS. These data require a multitude of data collectors and editors gathering and compiling data on essentially a year-round basis. Providing information of this extreme specificity for such data is clearly more burdensome than probative. For this reason, ANM's motion to compel a response to this interrogatory will not be ruled upon until ANM applies it to a particular library reference, or portion of a library reference.

ANM/USPS-4 also goes beyond what Rules 31 and 54 require. For example, it defines "any deliberate action taken to modify, expand, project, or audit routinely collected data" as a "special study" and asks detailed questions about the internal provenance of each such "study." This expands the definition of the term "special study" well beyond its ordinary meaning. Subsequent interrogatories ask, for each such "study," another detailed list of provenance questions (ANM/USPS-8), copies of all "forms used to collect, record, summarize or report data or results" (ANM/USPS-9), and detailed descriptions of "all alternative courses of action that were considered" (ANM/USPS-11). Whether the probative value of providing such detailed documentation outweighs the burden of providing it will depend on the "special study" to which it is applied. Therefore, ANM's motions to compel responses to such interrogatories will not be ruled upon until ANM seeks to apply them to a specific "special study"

## RULING

1. The Motion of Alliance of Nonprofit Mailers to Compel Answers to Interrogatories or Strike Testimony (ANM/USPS-1-16), filed November 14, 1997, and the Motion of Alliance of Nonprofit Mailers to Compel Answers to Interrogatory or Strike Testimony (ANM/USPS-17), filed November 17, 1997 are granted in part, to the extent described in the body of this ruling.

2. ANM and the Postal Service shall attempt to arrange technical conferences prior to the hearings on December 1-4, 1997, for the purpose of narrowing the scope of cross-examination concerning interrogatories ANM/USPS-1-17 that will be required during those hearings.

A handwritten signature in black ink, appearing to read "Edward J. Gleiman", is positioned above the printed name.

Edward J. Gleiman  
Presiding Officer